



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0409; FRL-9759-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determinations of Attainment of the 1997 8-Hour Ozone Standard for the Pittsburgh-Beaver Valley Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two separate and independent determinations regarding the Pittsburgh-Beaver Valley 1997 8-hour ozone nonattainment area (the Pittsburgh Area). First, EPA is proposing to determine that the Pittsburgh Area attained the 1997 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of June 15, 2010. This proposal is based upon complete, quality assured, and certified ambient air monitoring data for the 2007-2009 monitoring period showing monitored attainment of the 1997 8-hour ozone NAAQS. Second, EPA is proposing to determine that the Pittsburgh Area is attaining the 1997 8-hour ozone NAAQS, based on complete, quality assured, and certified ambient air monitoring data for the 2009-2011 monitoring period, and available preliminary data for 2012. If finalized, this determination would suspend the requirement for the Pittsburgh Area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain that NAAQS. These determinations do not constitute a redesignation to attainment. The Pittsburgh Area will remain designated nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the Pittsburgh Area meets the Clean Air Act (CAA) requirements for redesignation to

attainment, including an approved maintenance plan. These actions are being taken under the CAA.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID **EPA-R03-OAR-2012-0409** by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: Mastro.donna@epa.gov

C. Mail: **EPA-R03-OAR-2012-0409**, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0409**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814-2181, or by e-mail at pino.maria@epa.gov.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this action.

I. Background

II. Summary of Proposed Actions

III. EPA's Analysis of the Relevant Air Quality Data

IV. Proposed Action

V. Statutory and Executive Order Reviews

I. Background

A. The Pittsburgh Area

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Pittsburgh Area, which includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties in Pennsylvania. *See* 40 CFR 81.339.

B. Classification Under Subpart 2

Under the implementation rule for the 1997 8-hour ozone NAAQS, EPA designated certain areas under title I, part D, subpart 1 of the CAA (subpart 1) if they had a 1-hour design value below 0.121 ppm. In June 2004, EPA designated the Pittsburgh Area nonattainment under subpart 1 for the 1997 8-hour ozone NAAQS. In June 2007, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated the portion of the 1997 ozone implementation rule that allowed areas to be designated under subpart 1. On April 27, 2012, EPA finalized revisions to the 2004 rule that specified the first phase of requirements to meet the 1997 8-hour NAAQS (Phase 1 Implementation Rule). The revisions to the Phase 1 Implementation Rule are EPA's response to a December 22, 2006 decision by the D.C. Circuit Court in *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006) and

were effective on June 13, 2012 (77 FR 28424). As a result of this action, the CAA classifications for 16 nonattainment areas, including the Pittsburgh Area, were revised for the 1997 8-hour ozone NAAQS. The areas were originally classified under the more general subpart 1 provisions of the CAA. Through this rulemaking, the areas were classified as marginal or moderate under the ozone-specific subpart 2 provisions of the CAA, depending on their design values at the time of the original designations in April 2004. The Pittsburgh Area was classified as moderate. Moderate areas are required to attain the 1997 8-hour ozone NAAQS by June 15, 2010.

C. Previous Determination of Attainment

Under the provisions of EPA's ozone implementation rule (*see* 40 CFR section 51.918), if EPA issues a determination that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment), it will suspend the area's obligations to submit an attainment demonstration, RACM, RFP, contingency measures, and other planning requirements related to attainment for as long as the area continues to attain. The determination of attainment, also known as a "clean data" determination, is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

On May 31, 2011, EPA published a final determination that the Pittsburgh Area had attained the 1997 8-hour ozone NAAQS. (76 FR 31237). That determination was based upon complete, quality assured, and certified ambient air monitoring data that show the Pittsburgh Area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007 to 2009 monitoring period. In accordance with EPA's applicable ozone implementation rule, that determination suspended

the obligation of the Commonwealth of Pennsylvania to submit an attainment demonstration and associated RACM analysis, RFP plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Pittsburgh Area required under subpart 1 of the CAA for as long as the Pittsburgh Area continues to meet the 1997 8-hour ozone NAAQS. That determination of attainment was not equivalent to a redesignation to attainment. The Commonwealth must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

In its May 31, 2011 final rulemaking action, EPA explained that when the Pittsburgh Area was reclassified under subpart 2, EPA would address in a separate rulemaking the consequences of a determination of attainment for any requirements to which the Pittsburgh Area became subject as a result of its reclassification. If EPA subsequently determined in that rulemaking action that the Pittsburgh Area continued to be in attainment, then the obligation to submit the applicable attainment-related requirements for its new classification would be suspended in accordance with 40 CFR 51.918. (76 FR 76929). As previously discussed, the Pittsburgh Area was reclassified under subpart 2, effective June 13, 2012. Therefore, today's proposed rulemaking addresses the Pittsburgh Area's obligations under its new moderate classification.

D. Requirement to Determine Attainment by the Attainment Date

Under CAA section 181(b)(2), EPA is required to determine whether a nonattainment area attained the 1997 8-hour ozone NAAQS by its applicable attainment date, and to publish that determination in the Federal Register. If EPA determines that an area failed to attain the ozone NAAQS by its attainment date, the area is reclassified to a higher classification.

E. Ambient Air Quality Monitoring Data

Complete, quality assured, certified 8-hour ozone air quality monitoring data for the 2007-2009, 2008-2010, and 2009-2011 monitoring periods for the Pittsburgh Area, as recorded in the EPA Air Quality System (AQS) database show that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS. Preliminary data available to date for 2012 is consistent with continued attainment.

II. Summary of Proposed Actions

These actions do not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Pittsburgh Area will remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

A. Determination of Attainment by the Attainment Date

EPA is proposing to make a determination that the Pittsburgh Area attained the 1997 8-hour ozone NAAQS by its applicable attainment date of June 15, 2010. This determination is based upon complete, quality assured and certified ambient air monitoring data for the 2007-2009 monitoring period, which is the last full three-year period prior to the June 15, 2010 attainment date. The 2007-2009 data show that the Pittsburgh Area monitored attainment of the 1997 8-hour ozone NAAQS. The effect of a final determination of attainment by the Pittsburgh Area's attainment date would be to discharge EPA's obligation under CAA section 181(b)(2) to determine, based on the Pittsburgh Area's air quality as of the attainment date, whether the area

attained the standard by that date and to establish that the Pittsburgh Area will not be reclassified.

B. “Clean Data” Determination of Attainment

EPA is also proposing to make a determination that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS. This determination is based upon complete, quality assured and certified ambient air monitoring data that show the Pittsburgh Area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2009-2011 monitoring period. Preliminary data available for 2012 are consistent with continued attainment. Under the provisions of EPA’s implementation rule for the 1997 8-hour NAAQS (*see* 40 CFR 51.918), a final determination of attainment would suspend the CAA requirements for the Pittsburgh Area to submit an attainment demonstration and the associated RFP plan, contingency measures, RACM analysis, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS required for moderate areas under subpart 2 of the CAA. This suspension would remain in effect until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines, after notice-and-comment rulemaking, that the Pittsburgh Area has violated the 1997 8-hour ozone NAAQS. This final determination would be separate from, and would not influence or otherwise affect, any future designation or requirements for the Pittsburgh Area based on any new or revised ozone NAAQS. It remains in effect regardless of whether EPA designates the Pittsburgh Area as a nonattainment area for purposes of any new or revised ozone NAAQS.

III. EPA’s Analysis of the Relevant Air Quality Data

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the 8-hour

ozone ambient air quality monitoring data for the 2007-2009, 2008-2010, and 2009-2011 monitoring periods for the Pittsburgh Area, as recorded in the AQS database. On the basis of that review, EPA has concluded that the Pittsburgh Area attained the 1997 8-hour ozone NAAQS by its attainment date, based on data for the 2007-2009 monitoring period. EPA has also concluded that the Pittsburgh Area continues to attain, based on data for the 2008-2010 and 2009-2011 monitoring periods. Preliminary 2012 data is consistent with continued attainment.

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm (i.e., 0.084 ppm, based on the rounding convention in 40 CFR part 50, appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitoring site within the area, then the area is meeting the NAAQS.

Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in accordance with appendix I of 40 CFR part 50.

Tables 1, 2, and 3 below show the ozone design values for each monitor in the Pittsburgh Area for the years 2007-2009, 2008-2010, and 2009-2011, respectively. All design values are below 0.084 ppm, and all monitors meet the data completeness requirements. Therefore, EPA finds that the Pittsburgh Area attained the 1997 8-hour ozone NAAQS, considering 2007-2009, 2008-2010, and 2009-2011 data.

Table 1: 2007-2009 Pittsburgh Area 8-Hour Ozone Design Values

County	Monitor ID	2007-2009 Average % Data Completeness	2007-2009 Design Value (ppm)
Allegheny	420030008	99	0.077
	420030010	99	0.074
	420030067	98	0.073
	420031005	97	0.082
Armstrong	420050001	100	0.077
Beaver	420070002	97	0.073
	420070005	97	0.071
	420070014	100	0.073
Washington	421250005	99	0.072
	421250200	100	0.068
	421255001	95	0.072
Westmoreland	421290006	100	0.071
	421290008	99	0.072

Table 2: 2008-2010 Pittsburgh Area 8-Hour Ozone Design Values

County	Monitor ID	2008-2010 Average % Data Completeness	2008-2010 Design Value (ppm)
Allegheny	420030008	98	0.076
	420030010	96	0.071
	420030067	99	0.074
	420031005	99	0.081
Armstrong	420050001	100	0.076
Beaver	420070002	97	0.071
	420070005	96	0.073
	420070014	95	0.071
Washington	421250005	99	0.070
	421250200	99	0.068
	421255001	94	0.071
Westmoreland	421290006	99	0.068
	421290008	98	0.072

Table 3: 2009-2011 Pittsburgh Area 8-Hour Ozone Design Values

County	Monitor ID	2009-2011 Average % Data Completeness	2009-2011 Design Value (ppm)
Allegheny	420030008	98	0.074
	420030010	95	0.071
	420030067	99	0.075
	420031005	99	0.080
Armstrong	420050001	100	0.073
Beaver	420070002	97	0.069
	420070005	98	0.072
	420070014	94	0.071
Washington	421250005	99	0.069
	421250200	99	0.068
	421255001	96	0.069
Westmoreland	421290006	99	0.068
	421290008	98	0.069

In the Technical Support Document (TSD) prepared for this action, EPA has evaluated the air quality data for the Pittsburgh Area. EPA's review of the data indicates that the Pittsburgh Area has met the 1997 8-hour ozone NAAQS. For details, please refer to EPA's TSD, which can be viewed at <http://www.regulations.gov>, Docket ID No. EPA-R03-OAR-2012-0409.

IV. Proposed Actions

EPA is proposing to make two determinations regarding the Pittsburgh Area. First, pursuant to section 181(b)(2)(A) of the CAA, EPA is proposing to determine that the Pittsburgh Area attained the 1997 8-hour ozone NAAQS by its applicable attainment date, June 15, 2010. This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data for the 2007-2009 monitoring period. The effect of a final determination would be that: (i) EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine,

based on the area's air quality as of the attainment date, whether the area attained the standard; and (ii) the Pittsburgh Area would not be reclassified for failure to attain by its applicable attainment date. Second, EPA is proposing to make a determination that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS. This proposed "clean data" determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2009-2011 monitoring period. Available preliminary 2012 data is consistent with continued attainment. Pursuant to 40 CFR 51.918, if this clean data determination is finalized, it would suspend the requirements for the Pittsburgh Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

Finalizing both of these determinations or either of them would not constitute a redesignation of the Pittsburgh Area to attainment for the 1997 8-hour ozone NAAQS under CAA section 107(d)(3). Neither determination of attainment involves approving a maintenance plan for the Pittsburgh Area, nor determines that the Pittsburgh Area has met all the requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable measures.¹ Therefore, the designation status of the Pittsburgh Area will remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA takes final rulemaking action to determine that the Pittsburgh Area meets the CAA requirements for redesignation to attainment.

EPA is soliciting public comments on the issues discussed in this document. These comments

¹ The monitoring data from the 2007-2009, 2008-2010, and 2009-2011 monitoring periods that is relied on in this notice may be impacted by reductions associated with the Clean Air Interstate Rule (CAIR), which was remanded to EPA in 2008. *North Carolina v. EPA*, 531 F.3d 896, *as modified on reh'g*, 550 F.3d 1176 (D.C. Cir. 2008). Nonetheless, because this action addresses only whether the monitoring data shows attainment, EPA need not address at this time whether such attainment was due to the remanded CAIR.

will be considered before EPA takes final action.

V. Statutory and Executive Order Reviews

This action proposes to make determinations based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and/or would not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- are not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these proposed determinations that the Pittsburgh Area attained the 1997 8-hour ozone NAAQS do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determinations do not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements

Dated: November 21, 2012.

W.C. Early,
Acting, Regional Administrator,
Region III.

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